IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/06/2006

CORAM

THE HON'BLE MR. JUSTICE P.K. MISRA

CONTEMPT PETITION NO.482 of 2003

N. Palaniammal
Amasettipudur,
Pasur Post, Annur (via)
Coimbatore District. .. Petitioner

-Vs-

Antony Jayaraj
The Special Officer,
The Psur Pudduppalayam,
Primary Co-operative Bank Ltd.,
Pasur Post, Annur,
Avinashi Taluk,Coimbatore. .. Respondent

Petition filed under Sections 10 & 12 of the Contempt of Courts Act to punish the respondent for wilful and deliberate disobedience of the order dated 9.8.2002 in W.P.No.8155 of 1995.

!For Petitioner : Mr.L.N. Praghasham
^For Respondent : Mr.V. Karthick

:ORDER

The present application has been filed under Sections 10 and 12 of the Contempt of Courts Act alleging that there has been wilful and deliberate disobedience of the order dated 9.8.2002 in W.P.NO.8155 of 19 95.

2. The present applicant had filed W.P.No.8155 of 1995 claiming reinstatement in service with full backwages and other attendant benefits. By order dated 9.8.2002, the writ petition was allowed in the following terms :-
24. For the aforesaid reasons, the writ petition is allowed and the petitioner is directed to be reinstated with continuity of service and further a sum of Rs.15,000/- shall be paid towards back-wages. The direction regarding reinstatement should be carried out within a period of two months from the date of receipt of a copy of the judgment.
Thereafter, the present contempt petition has been filed by the successful writ petitioner.

3. The basic allegations are to the effect that even though

the applicant was allowed to attend office, she was not allowed to attend any work nor she was paid monthly salary. It has been further stated that she was compelled by the respondent-management to give an undertaking that she would not claim any monetary compensation as per the order of the High Court dated 9.8.2002. A lawyer's notice had been issued by the applicant on 8.3.2003 calling upon the management to allow the applicant to carry on her work and

pay her regular salary every month from the date of her reinstatement and also pay her backwages of Rs.15,000/- as directed by the High Court. Despite the receipt of such lawyer's notice, the respondent did not take any positive steps to comply with the order dated 9.8.2002.

4. After filing of such contempt petition, on 9.4.2003, when the matter was listed, a copy was directed to be served on the counsel who was appearing for the respondent in the connected writ petition. After appearance of the counsel for other side, it transpired that the direction regarding payment of Rs.15,000/- had been complied with and the main controversy revolved around the question of payment of salary to the applicant. Accordingly by order dated 14.10.2003, the respondent was directed to produce materials indicating the scale of pay of the applicant at the time when she was terminated and the comparative scale of other employees of the co-operative society and also scale of pay applicable to other employees. This direction was issued in view of the submission that the applicant after reinstatement was being paid even lower than the lowest scale of pay paid to any other employee and she was not being paid on par with other co-employees holding similar post. Thereafter, formal notice in the contempt petition was issued to the respondent.

5. A counter affidavit was filed on behalf of the respondent. In such counter affidavit it has been indicated that after the order was passed by the High Court on 9.8.2002, by proceedings dated 15.11.2002 , the applicant was directed to report for duty and she joined on 20.11.2002. She was also paid Rs.15,000/- as indicated in the order. Regarding salary payable to the petitioner, it has been stated as follows :-

"4. When the petitioner's service came to an end in 1991 the scale of pay that was applicable for the petitioner was Rs.395-10-445-15-520 -20-620-25 and the last drawn pay of the petitioner was Rs.631/-. On reinstatement the salary of the petitioner was fixed at Rs.857/- on the footing that the basic wage of the petitioner would be Rs.540/- taking into account the increments payable for the period of nonemployment. The petitioner was also granted dearness allowance of Rs.275/-, HRA of Rs.27/- and medical benefits of Rs.15/-. Though the petitioner was offered this amount, the petitioner refused to receive the same.

5. I state that on reinstatement the petitioner could not be offered the job of salesman as the village shop was already closed. The petitioner could not be appointed as the clerk as she is not a graduate or had undergone cooperative training. It was under these circumstances the petitioner was asked to perform the job of collection of dues from various members.

6. I state that when the petitioner was reinstated in service on 20.11.02, she was paid a sum of Rs.15,000/- as backwages. The order of this Hon'ble Court had been fully complied with. The order of this Hon'ble Court

does not with the issue of wages payable to the petitioner on her reinstatement. On reinstatement, her basic wage was fixed at appropriate scale with appropriate Dearness Allowance, House Rent Allowance and Medical Allowance. While the other employees in the Society were governed by an industry-wise settlement covering the cooperative trained staff working in various credit societies, the petitioner, being not a co-operative trained employee, could not be paid the wages or allowances as are fixed by the industry-wise settlement.
7. It is submitted that though the Court has not said anything about the wages payable to the petitioner on her reinstatement, in order to be fair to her, the respondent society has been advised to pay a wage of Rs.1828.75 from 20.11.02 to 31.3.03 and an enhanced wage of Rs.1,862/- from 1.4.03. On its own volition, the respondent society has agreed to pay the enhanced wage. This Hon□ble Court may record this undertaking of the Society and close the Contempt Petition.□

6. A reply affidavit has been filed on behalf of the applicant. It has been stated that she is not being paid surrender pay, bonus and yearly increment. It has been further stated that similarly placed employees / salesmen and women working in Keeklkadavukarai Society and Petha Naickan Palayan Society are receiving more than Rs.4,000/- as their salary.

7. As per order dated 14.10.2003, the learned counsel appearing for the respondent has produced several documents relating to wage structure at different stages.

8. The main contention of the applicant is to the effect that she is not being paid the salary payable to her as a salesperson. The contention of the respondent is to the effect that there is no particular

direction regarding payment of particular wage and, moreover, there being no requirement of a salesperson, the applicant has been asked to discharge duty on collection of dues.

9. The submission made by the learned counsel for the respondent that there is no direction for payment of any particular wage and, therefore, the management has fixed the amount payable to the applicant keeping in view the earlier salary paid to her is a rather clever way of over-reaching the order of the Court.

10. The High Court had categorically directed that the applicant shall be reinstated in service. It is not necessary for a court directing reinstatement of an employee in service that such employee after reinstatement shall be paid salary to which such employee is entitled. At the time of termination, the applicant was functioning as a salesperson. Since there is an order of reinstatement, it is obvious that such applicant has to be reinstated as a salesperson and shall be entitled to the salary payable to a salesperson in the organisation. It may be that since there was no further necessity of a salesperson, the management had engaged the person concerned in

similar other duties. By engaging the applicant to collect dues by itself cannot be said to be contrary to the order passed by the High Court. However, the fact remains that after such reinstatement, which is obviously in the capacity of a salesperson, the applicant is entitled to the salary payable

to a salesperson. As a matter of fact, the averment made in the counter affidavit in paragraph 4 clearly indicates that the salary of the petitioner was fixed at Rs.857/- by taking into account the increments for the period from 1991 till 2002. However, what is apparent is that the management had fixed the scale of pay and calculated increments in the scale which was applicable way back in 1991 and had never bothered to fit the applicant in the corresponding pay scale. The statement made in the counter affidavit to the effect ... Though the Court has not said anything about the wages payable to the petitioner on her reinstatement, in order to be fair to her, the respondent society had been advised to pay a wage of Rs.1828.75 from 20.11.2002 to 3 1.3.2003 and an enhanced wage of Rs.1862/- from 1.4.2003 is clearly an eye-wash as such wages offered to the petitioner is even less than the wages offered to the lowest ranking employee of the society, namely, peon. This averment in the counter affidavit, instead of showing any respect to the order of the court, clearly reflects the utter disregard on the part of the management of the order passed by the High Court. Such action taken by the society without making the slightest efforts to find out the corresponding scale payable to a salesperson cannot be countenanced in any manner.

11. As already indicated, learned counsel for the respondent had been called upon to produce various materials relating to salary which was payable to others in 1991 and salary payable or paid to others subsequently. The materials on record furnished by the counsel for the respondent indicate that on 1.3.1991 there was a settlement under Section 18(1) of the Industrial Disputes Act to the concerned society. Such document indicates that the present applicant was working as a salesperson and at that stage her basic pay was Rs.395/- and the total pay was Rs.631/-. Such document also indicates that one G. Gengammal was employed as Manure Sales Person and the basic pay was Rs.415/- (possibly such person must have earned one or two increments) and the total wages payable to such person was Rs.663/-. Such document also indicates that one Govindasamy, Peon was receiving basic pay of Rs.355/- and total pay of Rs.591/-.

12. There is yet another settlement dated 7.3.1994 under Section 12 (3) of the Industrial Disputes Act, of course on the date of such settlement, the present applicant was no longer in service as she had been terminated. However, such document indicates that the cadre strength of the society consisted of several grades including Salesman/ Attender in Grade V and Peon/Watchman/Sale Assistant/Packer in Grade VI. The salary of the Salesman/Attender had been fixed at Rs.640-20-680 -25-805-30-985-40-1225-50-1325, whereas the salary of the Peon/ Watchman/Sale Assistant/Packer in Grade VI was Rs.600-20-680-25-805-30-985-40-1225. In such Annexure-1, it was also indicated that the Primary Agricultural Co-opertive Bank can have one post of Salesman for each village shop, based on Norms approved by Registrar. It is obvious that such settlement included salesman/Attender as a category of employee having a particular scale of pay.

Prima facie the applicant, who was a salesperson before her termination, can be taken to be coming within the category of salesman in such settlement and obviously above the rank of Peon/Watchman/Sale Assistant/Packer in Grade VI.

13. The next document furnished by the counsel for the respondent is a true copy of the G.O. Stage No.131 Co-operative, Food and Consumer Protection Department dated 4.6.99 relating to fixation of salary of various employees. Annexure No.2 of such document indicates about the salary payable to different categories. Category No.5 relates to Sales Person/Stenographer. The scale of pay applicable to Sales Person/Stenographer is as follows:-
1815□60□2055-70□2475□80□2955-90-3495-100-3795
4 6 6 6 3

Salary payable to Category No.6 relating to Night Watchman/Peon/ Assistant Sales person/Packer is as follows :-

1695□60□2055-70□2475□80□2955-90-3495
4 6 6 6

The corresponding pay in the new scale of pay relating to salesperson is available as part of the said document.

14. Settlement under Section 18(1) dated 9.9.1999 similarly indicates about certain benefits. The corresponding scale relating to Sales Person/Stenographer is at Page No.44 of the typed set which is as follows :-
Sales Person/Stenographer
2125□70□2475-80□2995□90□3495-100-3995-110-4435
5 6 6 5 4
The scale relating to Night Wathcman/Peon/Assistant Sales person/ Packer is as follows :-
Night Watchman/Peon/Assistant Sales person/Packer

1935□60□2055-70□2475□80□2995-90-3495-100-3995-100-4105
2 6 6 6 5 1

Similarly under the subsequent settlement dated 27.5.2000, the scale relating to Sales Person/Stenographer is as follows :
Sales Person/Stenographer
2125□70□2475-80□2995□90□3495-100-3995-110-4435
5 6 6 5 4

The scale relating to Night Watchman/Peon/Assistant Sales Person/ Packer is as follows :-
Night Watchman/Peon/Assistant Sales person/Packer

1935□60□2055-70□2475□80□2995-90-3495-100-3995-100-4105
2 6 6 6 5 1

15. A bare perusal of these documents furnished by the

counsel appearing for the respondent clearly indicate that the applicant after her reinstatement, pursuant to the order of the High Court, was offered wages even much lower than what is available to a lower ranking person, namely, Peon. It is no doubt true that when such settlements were effected, the applicant was not in service and she had been terminated. However, in view of the order passed by the High Court, quashing the order of termination and directing reinstatement with continuity of service, it must be taken that she was in service through out. As a matter of fact, the management has also purported to calculate her increments during the said period. However, the applicant has been fixed in the pay scale which was available in the year 1991, completely ignoring the corresponding pay scale which was available subsequently. By fixing the salary of the petitioner on the basis of the pre-revised pay scale in the year 1991, the management has clearly reflected its churlish reaction to the order passed by the High Court. If the management was not happy with the order passed in the writ petition, the management should have challenged such order in appeal. However, when the order became final and the person was reinstated, it was expected of the management to pay the corresponding salary to the applicant. It is clear that the management has paid only lip service to the order of the Court and by denying the applicant the corresponding pay payable to a sales person, the management has clearly transgressed its limit with utter disregard to the order of this Court. By taking technical plea that there was no specific direction by the High Court regarding payment of any particular wage, the management has merely compounded the initial disobedience.

16. Learned counsel for the respondent has placed reliance upon a decision of the Supreme Court reported in (2005)7 SCC 406 (RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND OTHERS) and a Division Bench decision of this Court reported in 2005-III-LLJ 220 (KRISHNAMOORTHY, N. v. ABHIJIT DATTA AND OTHERS).

17. The Supreme Court decision related to the question of payment of salary for the period during which the employee was out of service. The order of termination of the employee was challenged before Civil Court by filing a suit for declaration that such termination was bad. In the suit, it was held that the order of termination was void and the employee was directed to be continuing in service and there was no specific direction for payment of backwages for the said period. In such view of the matter, the Supreme Court disapproved the decision of the High Court and held that backwages was not payable.

18. The question here is not relating to payment of backwages and in fact it was specifically directed that a sum of Rs.15,000/- is payable towards backwages, which has been paid. The direction is regarding reinstatement. If the plea of the respondent is accepted, it would mean that if a person is reinstated in service, no salary would be paid to such person forcing such person to come to court. The order passed by the High Court is required to be implemented in letter as well as in spirit. If the High Court gives a direction regarding reinstatement, it is obvious that after reinstatement such person should get his salary, but it may be that there may be some bonafide dispute regarding entitlement of the salary. In the present

case, the dispute raised by the management cannot be considered at all as bonafide as the management had deliberately tried to over-reach the order of the Court by calculating salary at the pre-revised rate in 1991 and completely ignoring the revised pay scale for the corresponding post subsequently. It should also be emphasised that the salary offered to the applicant is less than the salary paid to a peon, lowest ranking employee in such Society.

19. The other decision of the Division Bench of this Court is equally inapplicable. In the said case, in the writ appeal the Division Bench had directed that the concerned employee should be given continuity of service alone from October 1984. In the subsequent contempt proceedings, the Division Bench construed that there was no direction regarding increment and as such no contempt has been committed by not calculating the increments for the said period. In my considered opinion, such decision is also not applicable.

20. A litigant before the Court cannot and should not consider that the court proceedings is a game of chess. Every order of the Court is required to be interpreted in a fair and reasonable manner keeping in view the entire background of a particular case and no litigant should try to take advantage of some technical loophole. Every decision of a court can be challenged in a court of appeal and the effect of any inconvenient order can be got over by taking recourse to the normal procedure available. Where an

order becomes final, either because it is not challenged or even if challenged, not interfered with, it is the duty of the litigant to obey the order in letter and spirit.

21. In the present case, the respondent has clearly overstepped its limit by offering salary to the reinstated employee in the scale applicable in the year 1991, deliberately ignoring the corresponding rise in pay scale during the subsequent years. The recalcitrant attitude of the respondent is clearly indicative of wilful violation on the part of the respondent. Thus, there is no escape from the conclusion that the respondent is guilty of not implementing the court's order in letter and spirit and is liable to be punished. Since the respondent has not been heard on the question of appropriate punishment to be imposed, it is directed that this petition shall be listed for the purpose of hearing on the question of punishment on 21.7.2006 at 4.15 p.m. The respondent shall remain present.

dpk